IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31948 of 2007
and
M.P.No.2 of 2007

M/s. Chennai Footwear Private Limited,
Represented by its General Manager,
Mr.Sathish Kumar,
Moosa Kollai III Street,
Jalal Road, Ambur,
Vellore District - 635 802. ... Petitioner

Vs.

The Commercial Tax Officer,
Ambur Assessment Circle,
Ambur, Vellore District. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records comprised in TNVAT No : 33344262230/06-07 and 07-08 dated 26.09.2007 on the file of the respondent herein and to quash the same and consequently to direct the respondent herein to give a reasonable opportunity of hearing to the petitioner.

For Petitioner : Mr. S. Ramamurthy for
Mr. Mohammed Shaffiq

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr. S. Ramamurthy, the learned counsel for Mr.Mohammed Shaffiq, the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader for the respondent.

2. The petitioner, who is a registered dealer, on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is engaged in the manufacture and sale of shoe materials. The petitioner filed returns in Form-O for the period from January 2007 to July 2007. On examination of the returns, the respondent

opined that, according to Section 19 (5) of the TNVAT Act, no input tax credit shall be allowed, in respect of the goods exempted under Section 15 of TNVAT Act. The said notice was issued on 20.09.2007. This notice is not a show cause notice but a demand by itself. However, the petitioner construed the said notice as a show cause notice and submitted their reply, dated 24.09.2007, in which, they stated that, in the month of May, June & July-07, the petitioner has raised some invoices to 100% EOU company, called Farida Shoes Pvt, Ltd., with 4% Vat, for which, the respondent has objected and returned the invoices for revision, and have asked the petitioner to raise the invoices under exempted sale basis, and on the basis of above, the petitioner has raised invoices without VAT under EOU Sales (Exempted). Though such a specific stand has been taken by the petitioner and the petitioner has also revised returns, the respondent completed the assessment, by stating that the petitioner's contention cannot be accepted, since they have also effected first sale of shoe uppers to the dealers within the State of Tamil Nadu. If the petitioner had filed revised returns, as per the stand taken by them, in the objections, the respondent could very well verify the same, and failure to do so has resulted in violation of principles of natural justice. That apart, the assessment year is already over, and the impugned order is only in relation to part of the year. Therefore, the respondent should necessarily complete the assessment for the entire year.

3. For the above reasons, this Writ Petition is allowed, the impugned order is set aside, and the matter is remanded to the respondent for fresh consideration, who shall take note of the revised returns and redo the assessment in respect of the full year in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

msm/sd

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Ambur Assessment Circle,
Ambur, Vellore District.

+1CC to MOHAMMED SHAFFIQ Advocate SR.NO.81046
+1CC to Spl Govt Pleader (Taxes) SR.NO.80906
+1CC to Spl Court Pleader (Taxes) Advocate SR.NO.80903

W.P.No.31948 of 2007

MK:20/02/2018